



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

BUENA VISTA COMPANY V. MCCANDLISH & CLOWES.—Decided at Richmond, November 21, 1895.—*Harrison, J.* :

1. **RESCISSION**—*Assumpsit—money had and received—special count.* If money be paid on a contract of sale which is wholly rescinded, either by mutual consent or by virtue of a clause therein, or the consideration of which wholly fails, the party making such payment, if he has been guilty of no fraud or illegal conduct in the transaction, may recover back the money under the common counts in assumpsit for money had and received, or on a special count setting out the facts from which the cause of action arises.

2. **EVIDENCE**—*Assumpsit for money paid on sealed contract which has been rescinded.* In an action of assumpsit to recover money paid on a contract which has been rescinded, it is competent for the plaintiff to introduce in evidence the contract, though under seal and not signed by him, which has been rescinded, and which shows the amount paid by the plaintiff, and the consideration therefor. The contract is not in support of the form of the action, but is a part of the evidence necessary to prove the plaintiff's case.

3. **CONTRACTS**—*House building—plans and specifications—substantial compliance.* If one contracts to purchase a house which is to be built according to designated plans and specifications, he will not be compelled to accept it, when completed, unless there has been a substantial compliance with such plans and specifications. The changes, however, need not affect the value or utility of the building as a whole, or of the part changed. Changes or deviations which involve merely matters of taste, or which affect the appearance of the building, or in any way make it less desirable to the purchaser, entitles him to decline to accept it. Nor can the failure to comply with the specifications in one part be compensated or atoned for by doing more than was required in another part. The purchaser cannot be compelled to take that for which he has not contracted, nor can he refuse to take that which is substantially what he fairly contracted for.

4. **PRACTICE AT COMMON LAW**—*When verdict should not be set aside.* In an action to recover back money paid on a contract which the plaintiff has treated as rescinded, the Court will not set aside a verdict in favor of the plaintiff, where the evidence shows that the conduct of the defendant has been such as to amount to a rescission on his part, or to justify one on the part of the plaintiff.

5. **APPELLATE COURT**—*How excessive verdict corrected.* If it appears to the appellate court that the verdict of the jury and the judgment of the trial court are plainly right, except only that the amount is excessive, and the record shows plainly the amount of such excess, the judgment will be reversed and set aside and the cause remanded to the trial court, with instructions to put the successful party on terms to release the excess, or to award a new trial, and if such excess is released, to enter judgment for the corrected amount.

NATIONAL BANK OF VIRGINIA V. CRINGAN AND OTHERS.—Decided at Richmond, April 18, 1895.—*Harrison, J.* :

1. **PARTNERSHIP**—*Powers of partners before and after formation.* Prior to the actual existence of a partnership, though one be in contemplation, there is no implied power in one partner to bind the firm. That agency only arises when the

partnership is actually in existence, and is then limited to matters necessary to the business of the firm in the ordinary way. Nor can one partner after the partnership is formed pledge the credit of the firm to raise his input of its capital unless specially authorized to do so. This is not among his implied powers.

2. PARTNERSHIP—*Liability on note of one partner for input—burden of proof.* A note made by one partner and endorsed by another, in order to raise money for the input of the maker, is not the debt of the firm unless there was previous authority thus to bind the firm, or there has been a subsequent ratification of the transaction by the firm; and the burden of proof is on the holder to show such authority or ratification. In the case in judgment this has not been shown.

3. PARTNERSHIP—*Credit to one partner—election—public partnership—dormant partner.* If credit is extended to one member of a partnership which is public, he alone is liable, even though the money, property, or other contract, is for the use and benefit of the firm, or is applied thereto. This is because the creditor has elected to take the individual security, and he will be held to his election. But if no partnership was known to exist, or if there were dormant partners, the firm will be liable for the acts of the partner done within the scope of his authority—that is, necessary for the conduct of the partnership in the ordinary way; otherwise, the measure of the liability of the dormant partner is the same as if he had been a known partner—he is liable for the debts of the firm, not for those of the individual partners.

4. PARTNERSHIP—*Avowed partners—dormant partners—Sec. 2877 of Code.* Sec. 2877 of the Code does not apply to an avowed partnership of two or more persons doing business under a name which shows that it is in fact a partnership, and discloses full names of at least two of the partners. If there are other partners whose names are not thus disclosed, they will be liable as general partners, when avowed or discovered. But even if the statute did apply, the trader whose assets are liable for his debts is the firm which thus held itself out as the owner of the assets.